



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated May 12, 2019 ("One Month Notice"), for a monetary claim of \$100.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The Tenant and the Tenant's Representative, M.K., ("Representative"), the Landlord and an agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single

application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside the One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. Therefore, I advised the Parties in the hearing that I will only consider the Tenant's request to set aside the One Month Notice. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or dismissed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 15, 2015, with a monthly rent of \$725.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$312.50, and no pet damage deposit.

The Landlord and her Agent said that the Tenant does a lot of screaming and yelling at night and that they are frightened and concerned for her safety when this happens. The Landlord described an incident that she said spurred her to issue the One Month Notice:

One day we broke a statue of hers by mistake. We didn't mean to do it, but when [the Tenant] discovered it, she became very angry and over-reacted. She threw the statue on the driveway and it broke into multiple pieces. She constantly yells and screams.

The Landlord also stated:

We want a tenant who doesn't make us feel uncomfortable. Someone broke the window once and although we know it wasn't [the Tenant], she is surrounded by people like that and it scares us. We're a small family of three: a single mom, no Dad. We want a tenant who is calm and causes no issues. We are worried about our safety.

The Tenant said that they are overstating the screaming and yelling, as she said she has done this once or twice. She said she does not have a lot of people coming over and she has never received complaints about it.

The Tenant spoke about the incident with her broken statue or sculpture. She said that no one told her it was an accident. She said she just noticed it was broken and she got upset and tossed it down the driveway. The Tenant said that no one apologized to her for having broken it and that it seemed like an intentional act.

In terms of the broken window, she said it happened over a year ago, and she didn't do it, but she said she paid for it to be replaced, even though she could not afford it.

The Tenant's Representative said that she works for a housing program and that they have not received any written complaints about the Tenant being noisy. The Representative said the Landlords do not have any reason to worry about the Tenant being angry or aggressive. She said the Tenant admitted that she over-reacted about the broken sculpture, but that this happened days after her cat died.

The Representative said that after the incident, the Tenant received texts from the Landlord threatening eviction and that although it bothered the Tenant, she did not react to the texts.

The Landlord admitted that the incident with the sculpture was a "one-time thing", but that they feel unsafe now. The Landlord said that the other matters were from the past, but that they "didn't realize that this bothered us until she threw the statue down the road." The Landlord said that they want a fresh start with a new tenant.

The One Month Notice did not indicate on which ground the Landlord was relying to end the tenancy for cause. Rather, the Landlord wrote the following explanation in a box on the Notice entitled "Details of Cause(s):"

The tenant was very aggressive and overreacted in a situation that happened today (May 11th 2019). She threw a clay sculpture down the driveway having it shatter into tiny sharp pieces. Due to her overreacting this way and showing such behaviour it scared me and made me feel unsafe. She then started to yell in a hostile tone and swear at me. In the past she always was very loud and would scream at times, which scares my kids and I. I also recall the cops having to come down a couple of times and us being a family of 3 we want a calm tenant that won't cause problems like these and making us feel unsafe.

[reproduced as written]

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end the tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by applying for dispute resolution within ten days after the date the tenant received the Notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities the reasons set out in the One Month Notice.

In the case before me, the Landlord served the One Month Notice on the Tenant by posting it on the rental unit door on May 12, 2019. The effective vacancy date on the One Month Notice is June 15, 2019; however, this date is inconsistent with section 47(2) of the Act, which states:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Accordingly, the effective vacancy date on the One Month Notice should have been June 30, 2019, not June 15, 2019. However, pursuant to section 53 of the Act, “if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.” I find that the effective vacancy date is corrected to June 30, 2019.

Section 47 of the Act sets out that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.

The Landlord did not indicate on the One Month Notice which ground she was relying on as the basis for ending the tenancy. The Landlord's evidence in the hearing was that the One Month Notice was initiated by one incident in which the Tenant admittedly over-

reacted to someone having broken her sculpture. The Landlord also referred to occasions on which the Tenant screamed and yelled in the rental unit; however, the Landlord did not document these instances or indicate how often this happens. Further, I find that the Landlord did not provide the Tenant with any warning that this behaviour could lead to the end of the tenancy, certainly not any written warning.

The Landlord referred to the police as attending the unit; however, the Representative explained that the police had attended at the request of the Tenant, because she felt unsafe in one instance.

When I consider all the evidence before me overall, I find that the Landlord has not fulfilled her burden of proof on a balance of probabilities that the Tenant breached a section of the Act, regulation or tenancy agreement. Therefore, I cancel the One Month Notice and award the Tenant recovery of the \$100.00 Application filing fee.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice. The Tenant's other claims are dismissed with leave to reapply. The One Month Notice is hereby cancelled and is of no force or effect.

The Tenant is given awarded recovery of the \$100.00 Application filing fee from the Landlord. I authorize the Tenant to reduce one rent payment by \$100.00 in satisfaction of this award.

The tenancy continues until ended in accordance with the Act, regulation and tenancy agreement. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 28, 2019

Residential Tenancy Branch